

Message Text

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TO ALL AMERICAN REPUBLIC DIPLOMATIC POSTS

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CORRECTED COPY (PARAGRAPHS RENUMBERED)

E.O. 11652: N/A

TAGS: TGSG: PFOR, MFM, XM.

SUBJECT: TNE WORKING GROUP-- POLITICAL PRINCIPLES

1. FOLLOWING IS TEXT OF SUBSTANTIVE PAPER WHICH WILL FORM BASIS OF US DISCUSSION AT JANUARY 13-17 TNE WORKING GROUP. PAPER IS BEING GIVEN TO LA DELEGATES WHO ARE GATHERING FOR PRE-MEETING CAUCUS. AS MAJORITY LA DELEGATES ARE WASHINGTON BASED EMBASSY PERSONNEL THEY CAN BE EXPECTED TO QUERY RESPECTIVE FOREIGN OFFICES FOR INSTRUCTIONS.

2. TO EXPEDITE TRANSMISSION SUCH INSTRUCTIONS, ADDRESSES ARE REQUESTED TO PASS TEXT TO APPROPRIATE FOREIGN OFFICE PERSONNEL ASAP.

3. BEGIN TEXT

AT THE SECOND PRELIMINARY MEETING OF THE TRANSNATIONAL
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ENTERPRISES (TNE) WORKING GROUP ON MULTINATIONAL CORPORATIONS, THE UNITED STATES DELEGATION AGREED THAT PRIOR TO THE BEGINNING OF THE THIRD SESSION ON JANUARY 13, IT WOULD CIRCULATE TO THE DELEGATIONS A PAPER OUTLINING ITS

VIEWS ON PRINCIPLES APPLICABLE TO TRANSNATIONAL ENTERPRISES AS A CONSEQUENCE OF POLITICAL PROBLEMS THAT MAY ARISE OUT OF THE ACTIVITY OF SUCH ENTERPRISES IN INDIVIDUAL COUNTRIES AND IN RELATIONS AMONG STATES. THIS PAPER IS AN ATTEMPT TO THIS AREA.

4. THE UNITED STATES DELEGATION REALIZES THAT PRINCIPLES OF A SO-CALLED POLITICAL NATURE ARE CONTROVERSIAL AND THAT IT MAY WELL BE DIFFICULT TO REACH FULL AGREEMENT ON THEIR CONTENT, SCOPE AND IMPACT. THE UNITED STATES DELEGATION HAS, FOR EXAMPLE, CONSISTENTLY TAKEN THE VIEW THAT PRINCIPLES APPLICABLE TO TRANSNATIONAL ENTERPRISES IN THIS AREA, ALTHOUGH DIRECTED PRIMARILY AT THE CONDUCT OF THE COMPANIES THEMSELVES, NECESSARILY DEPEND UPON THE RELATIONSHIP OF THOSE ENTERPRISES TO THE GOVERNMENTS OF BOTH HOST AND HOME COUNTRIES.

5. WE ASSUME, FOR EXAMPLE, THAT ONE OF THE OBJECTIVES OF A STATEMENT OF PRINCIPLES IS TO ASSURE THAT THE UNITED STATES GOVERNMENT WILL ENCOURAGE THE TNES WHICH MAY BE, IN PART, UNDER THE JURISDICTION OF UNITED STATES LAWS AND POLICIES, TO ACCEPT THESE PRINCIPLES AND TO SEEK TO CONFORM THEIR ACTIVITIES WITH THE OBJECTIVES EMBODIED THEREIN. SIMILARLY, IF THE TNES ARE TO ACCEPT THESE PRINCIPLES IN THE LETTER AND SPIRIT IN WHICH THEY HAVE BEEN DRAFTED, AND, PERHAPS MORE IMPORTANT, TO INVEST IN COUNTRIES WHICH HAVE MADE THESE PRINCIPLES A PART OF THEIR POLICIES TOWARD FOREIGN INVESTMENT, THE NEED FOR TNES TO BE ABLE TO RELY ON ESTABLISHED LAWS AND REGULATIONS SHOULD BE TAKEN INTO ACCOUNT. THE UNITED STATES DELEGATION THUS FEELS THAT THE CONCEPT OF PRINCIPLES WHICH RELATE TO GOVERNMENTAL, AS WELL AS COMPANY, ACTIVITY, IS FULLY CONSISTENT WITH THE OBJECTIVE OF THIS WORKING GROUP AND IN FACT PROVIDES THE ONLY REASONABLE BASIS FOR ASSUMING THAT THE PRINCIPLES WILL IN FACT HAVE A FAVORABLE IMPACT ON TNE ACTIVITIES.

6. MOREOVER, CONFLICTING EFFORTS TO REGULATE THE ACTIVI-
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TIES OF TNES, AS WELL AS DISPUTES BETWEEN TNES AND HOST GOVERNMENTS RAISE ISSUES OF GOVERNMENTAL RESPONSIBILITY THAT IN THE VIEW OF THE UNITED STATES CAN BEST BE RESOLVED THROUGH CONSULTATION OR OTHER REGULARIZED, MUTUALLY ACCEPTABLE PROCEDURES. THE U.S. SHARES THE DESIRE THAT INVESTMENT ISSUES, AND OTHER ISSUES RELATED TO THE ACTIVITIES OF TNES, NOT BECOME ISSUES BETWEEN GOVERNMENTS. WE RECOGNIZE THAT THE PRESENT SITUATION IS NOT SATISFACTORY. THE SECRETARY OF STATE HAS SUGGESTED THE POSSIBILITY OF A FACT-FINDING PROCEDURE; WE ARE PREPARED TO COOPERATE WITH YOU IN DEVELOPING THIS OR SOME OTHER SUITABLE PROPOSAL.

7. OUR COMMENTS ON SPECIFIC AREAS WHICH CONCERN POLITICAL

ISSUES ARE SET FORTH BELOW. IN DRAFTING THESE COMMENTS THE U.S. DELEGATION HAS STUDIED LATIN AMERICAN STATEMENTS OF POSITION SET FORTH BY THE DELEGATION OF MEXICO AT THE FIRST PRELIMINARY SESSION OF THIS WORKING GROUP IN

AUGUST, AND BY THE SPOKESMAN OF THE LATIN AMERICAN GROUP (VENEZUELA) AT THE TLATELOLCO AND WASHINGTON MEETINGS OF FOREIGN MINISTERS. WE HAVE ALSO DRAWN EXTENSIVELY FROM THE STATEMENTS OF SECRETARY KISSINGER MADE AT THE APRIL MEETING IN WASHINGTON.

1. BEGIN UNDERLINED: COMPLIANCE WITH LAWS & COURTS OF THE HOST COUNTRY END UNDERLINED

SECRETARY KISSINGER RECOGNIZED AT WASHINGTON THAT "EVERY STATE HAS THE RIGHT TO PRESCRIBE, CONSISTENT WITH INTERNATIONAL LAW, THE CONDITIONS UNDER WHICH TRANSNATIONAL CORPORATIONS OPERATE WITHIN THEIR NATIONAL JURISDICTION" AND THAT "THESE CORPORATIONS MUST RESPECT THE SOVEREIGNTY AND LAWS OF THE NATION IN WHICH THEY OPERATE." WE DO NOT BELIEVE THAT THERE IS ANY SIGNIFICANT CONTROVERSY OVER THE OBLIGATION OF TNES TO COMPLY WITH THE LAWS OF THE COUNTRIES IN WHICH THEY OPERATE, AND THE RIGHTS OF STATES TO REGULATE AND SUPERVISE THE ACTIVITIES OF TNES WITHIN THEIR NATIONAL JURISDICTIONS AND TAKE MEASURES TO ENSURE THAT SUCH ACTIVITIES COMPLY FULLY WITH THEIR LAWS, RULES AND REGULATIONS AND CONFORM WITH THEIR ECONOMIC AND SOCIAL POLICIES. OBVIOUSLY, SUCH LAWS AND REGULATIONS SHOULD BE UNCLASSIFIED

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CONSISTENT WITH INTERNATIONAL LAW WHERE IT MAY BE APPLICABLE.

8. THE UNITED STATES RECOGNIZES THAT IN A CHANGING WORLD THE LAWS AND REGULATIONS GOVERNING FOREIGN INVESTMENT CANNOT BE EXPECTED TO REMAIN STATIC AND UNCHANGING. THE UNITED STATES MAKES CHANGES FROM TIME TO TIME IN ITS OWN LEGISLATION AFFECTING CORPORATIONS IN SUCH AREAS AS TAX, REGULATION OF BUSINESS PRACTICES AND SO ON. WE WOULD BE UNREASONABLE IF WE DID NOT RECOGNIZE THAT OTHER COUNTRIES HAD SIMILAR NEEDS FOR MAKING CHANGES IN THEIR LAWS AND REGULATIONS AFFECTING BUSINESS IN ORDER TO BRING THOSE REGULATIONS INTO GREATER CONFORMITY WITH THE COUNTRY'S DEVELOPMENT OBJECTIVES AND GOALS. NOR DO WE FEEL THAT IT IS UNREASONABLE FOR A HOST COUNTRY TO REQUIRE, IN CASES WHERE CONTROVERSIES WITH A PRIVATE PARTY ARISE, THAT ITS NATIONAL JURISDICTION BE EXHAUSTED, UNLESS OTHERWISE AGREED BY THE PARTIES. HOWEVER, THE UNITED STATES GOVERNMENT BELIEVES THAT A STATEMENT OF THIS PRINCIPLE SHOULD INCLUDE RECOGNITION THAT TNES ARE ENTITLED TO EXPECT IF THE RULES UNDER WHICH THEY MADE THEIR INITIAL INVESTMENTS ARE CHANGED, THAT THE CHANGES WILL BE MADE IN

A FAIR AND NON-DISCRIMINATORY MANNER, AND THAT THE TNES WILL THEREAFTER CONTINUE TO RECEIVE JUST AND REASONABLE TREATMENT CONSISTENT WITH APPLICABLE PRINCIPLE OF INTERNATIONAL LAW.

BEGIN UNDERLINED: ABSTENTION FROM POLITICAL ACTIVITY
END UNDERLINED.

SECRETARY KISSINGER ALSO STATED IN WASHINGTON HIS BELIEF THAT TNES SHOULD "CONDUCT THEMSELVES AS GOOD CORPORATE CITIZENS OF (THE NATIONS IN WHICH THEY OPERATE) AND REFRAIN FROM INTERFERENCE IN THEIR INTERNAL AFFAIRS." THE U.S. GOVERNMENT FULLY AGREES THAT TRANS-NATIONAL ENTERPRISES MUST NOT INTERVENE IN THE INTERNAL AFFAIRS OF A HOST STATE. WE FEEL THAT GOOD CORPORATE CITIZENSHIP ABROAD AS WELL AS AT HOME SHOULD BE THE OBJECTIVE OF EVERY CORPORATION, AND WE BELIEVE THAT VIRTUALLY ALL TRANSNATIONAL ENTERPRISES, BOTH U.S. AND FOREIGN, SHARE THIS OBJECTIVE.
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9. IN PRACTICE THE LAWS AND REGULATIONS OF THE HOST COUNTRY ARE NORMALLY BOTH REASONABLE AND EXPLICIT IN DETAILING THE TYPES OF POLITICAL ACTIVITY THAT ARE PROHIBITED. OF COURSE TNES, LIKE LOCAL COMPANIES AND INDIVIDUALS, HAVE A RIGHT - IF NOT THE RESPONSIBILITY - TO PRESENT THEIR VIEWS ON MATTERS WHICH AFFECT THEIR BUSINESS OPERATIONS TO APPROPRIATE OFFICERS OF THE GOVERNMENTS IN WHICH THEY OPERATE AND, IN APPROPRIATE CIRCUMSTANCES, TO THE PUBLIC THROUGH THE MEDIA. THE UNITED STATES HAS FELT THAT IN MANY CASES THE PROBLEMS WHICH TNES HAVE EXPERIENCED CONCERNING THEIR ACTIVITIES IN HOST COUNTRIES MIGHT HAVE BEEN AVOIDED IF THERE HAD BEEN BETTER COMMUNICATION BETWEEN TNE EXECUTIVES AND RESPONSIBLE HOST COUNTRY OFFICIALS.

10. THE UNITED STATES IS PREPARED TO SUPPORT A PRINCIPLE WHICH REFLECTS ON THE ONE HAND THE NECESSITY OF AVOIDING ANY INTERFERENCE IN HOST COUNTRY AFFAIRS AND, ON THE OTHER HAND, THE DESIRABILITY OF LEGITIMATE CONTACTS BETWEEN TNE AND HOST GOVERNMENT OFFICIALS BASED ON REASONABLE AND CLEAR HOST COUNTRY GUIDELINES IN THIS AREA. ON THIS BASIS WE WOULD THUS BE WILLING TO JOIN IN CALLING UPON TNES TO CONDUCT THEMSELVES AS GOOD CORPORATE CITIZENS OF THE NATIONS IN WHICH THEY OPERATE, AND TO REFRAIN FROM IMPROPER INTERFERENCE IN THEIR INTERNAL AFFAIRS AND FROM ALL UNLAWFUL POLITICAL ACTIVITIES.

11. BEGIN UNDERLINED:3.TNES AS AN INSTRUMENT OF FOREIGN POLICY. END UNDERLINED.
TO A CERTAIN EXTENT THIS CONCEPT IS RELATED TO PART I ABOVE. THE UNITED STATES BELIEVES THAT THE NATURE OF

THE OPERATIONS OF TNES, WHICH HAVE EFFECTS BOTH IN HOME COUNTRIES AND HOST COUNTRIES, INEVITABLY CREATES SITUATIONS OF CONCURRENT AND SOMETIMES CONFLICTING JURISDICTION. THIS CAN PRESENT THE TNES WITH A DILEMMA. THEY ARE CALLED UPON TO (A) OBEY THE LAWS AND REGULATIONS OF ONE OR SEVERAL HOST COUNTRIES, AND (B) OBEY THE LAWS AND REGULATIONS OF THE HOME COUNTRY WHERE APPLICABLE. YET THE VARIOUS SETS OF LAWS MAY BE IN CONFLICT, IN WHICH CASE ONE OF THE STATES INVOLVED MAY CONSIDER THAT THE OTHER IS UNCLASSIFIED

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USING THE TNE AS AN INSTRUMENT OF FOREIGN POLICY.

12. THE UNITED STATES IS AWARE THAT ITS EFFORTS TO ENFORCE ITS LAWS UPON COMPANIES WHICH ARE, IN PART, UNDER ITS JURISDICTION EVEN WHEN THEY OPERATE OUTSIDE THE UNITED STATES, LEADS ON OCCASION TO CONFLICTS WITH THE LAWS OF THE HOST STATES, ESPECIALLY IN SUCH AREAS AS ANTI-TRUST LAWS AND RESTRICTIVE BUSINESS PRACTICES AND WITH RESPECT TO CERTAIN TYPES OF TRADE. AT THE SAME TIME, THE OPERATION OF TNES ABROAD, EVEN WHEN CONSISTENT WITH LAWS OF HOST COUNTRIES, MAY WELL HAVE EFFECTS UPON THE UNITED STATES. WE DO NOT BELIEVE THAT CONFLICTS CAN BE RESOLVED BY A GENERAL PRINCIPLE IN WHICH THE HOME STATE RENOUNCES ITS RIGHTS TO APPLY ITS LAW TO TNES OPERATING ABROAD. IN SOME CASES INTERNATIONAL AGREEMENTS ON ANTI-TRUST LAW OR TAXATION MAY BE HELPFUL. IN OTHERS, THE BEST SOLUTION MAY SIMPLY BE TO DETERMINE, ON THE BASIS OF COMITY, WHICH STATE HAS A BETTER ARGUMENT FOR THE APPLICATION OF ITS LAW BUT, PARTICULARLY DURING THE BEGINNING PERIOD OF THIS EFFORT TO ESTABLISH USEFUL AND WORKABLE GUIDELINES CONCERNING SITUATIONS WHICH NOW INVOLVE CONFLICTS OF JURISDICTION, WE BELIEVE THAT CLOSE AND FREQUENT CONSULTATION IS HIGHLY DESIRABLE FOR THE PURPOSE OF ACHIEVING THE MOST MUTUALLY SATISFACTORY SOLUTIONS OR UNDERLINED MODUS VIVENDI. END UNDERLINED.

13. THE UNITED STATES IS PREPARED TO DISCUSS AT ANY TIME WITH INDIVIDUAL COUNTRIES OR GROUPS OF COUNTRIES MECHANISMS OR AGREEMENT WHICH MIGHT HELP TO AVOID THESE CONFLICTS AND THE PROBLEMS THEY CAUSE FOR HOST COUNTRIES AND HOME COUNTRIES ALIKE. WE ARE ALSO PREPARED TO SUBSCRIBE TO A PRINCIPLE WHICH WOULD BE APPLICABLE TO TNE ACTIVITIES CALLING UPON STATES, WITH FULL REGARD FOR THEIR SOVERIGN RIGHTS TO COOPERATE IN GOOD FAITH WITH OTHER STATES IN EXERCISING THEIR RIGHT TO REGULATE TNES AND TO RESOLVE CONFLICTS OF JURISDICTION IN THE APPLICATION OF THEIR LAWS TO FOREIGN INVESTORS, DUE REGARD BEING PAID TO THE INTERESTS OF BOTH STATES.

14. AS INDICATED AT MEETINGS OF FOREIGN MINISTERS LAST YEAR AND AT MEETINGS OF THE RESULTING WORKING GROUP, THE

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UNITED STATES BELIECES THAT A SET OF GUIDELINES OR
PRINCIPLES RELATING TO THE ACTIVITIES OF THE TNES CAN BE
A VERY USEFUL TOOL, INDICATING TO THE TNES AND HOST AND
HOME COUNTRIES WHAT CAN REASONABLY BE EXPECTED OF TNES,
AS WELL AS WHAT TNES SHOULD BE ENTITLED TO EXPECT IN
REGARD TO THEIR OPERATIONS IN A PARTICULAR HOST COUNTRY.
KISSINGER

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